

**TOWN OF WEST HARTFORD PUBLIC HEARING  
AUGUST 23, 2016  
6:00 p.m. Legislative Chamber**

**ORDINANCE REGULATING BARBERING, HAIRDRESSING, COSMETOLOGY,  
NAIL, TANNING, TATTOO AND BODY PIERCING SALONS:**

**Public Hearing called to order at 6:23 p.m.**

President Cantor: It's the 6:00 p.m. Public Hearing to order, Ordinance Regulating Barbering, Hairdressing, Cosmetology, Nail, Tanning, Tattoo, and Body Piercing Salons. Number...so roll, roll call, Madonna. Thank you for being here.

Councilors Barnes, Cantor, Davidoff, Dodge, Hall, Kerrigan, and Wenograd were present. Councilors Casperson and Williams were absent.

President Cantor: Thank you, Madonna. Let's have the presentation from the Town Manager. Thank you.

Mr. Van Winkle: Thank you. As you can see, we have our Director of Health, longtime Director of Health, Steve Huleatt and Aimee Everley from our Health Department. They're gonna come up...

Mr. Huleatt: Krauss.

Mr. Van Winkle: ...Krauss.

Mr. Huleatt: She got married.

Mr. Van Winkle: She got married. Not, not yesterday either so...Aimee Krauss and Steve Huleatt. They're gonna do a little presentation on what this Ordinance does, so you wanna come up to the?

Mr. Huleatt: Sure. Okay. I think I pressed the speaker. I think I read the directions correctly. Okay. Good evening. Thank you, Ron. Madam Mayor, members of the Council, thank you for hearing this Ordinance tonight. My name is Steve Huleatt. I'm the Director of Health with West Hartford/Bloomfield Health District. Our offices are located at 580 Cottage Grove Road in Bloomfield, Connecticut. And with me to my right is Aimee Krauss, our Assistant Director of Health. So I'm gonna give a sort of overview of the Ordinance; why, why this Ordinance, why now. Aimee then will address any particular technical details as she is really sort of the architect of, of a lot of the Ordinance itself and certainly we owe our gratitude to Corporation Counsel's office for their support in what has been perhaps a couple years of development of this Ordinance. Take off my glasses. So anyway, as the Mayor introduced it, this is the Ordinance regulating barbering, hairdressing, cosmetology, nail, tanning and body piercing salons. This timeframe has added more state regulations as we've gone along so that's how this Ordinance also seeming to be capturing more things. So we thought it'd be better to just have it all in one home than to have a lot of little Ordinances. So, so from that nature, it was a strategic decision to try to bundle these up so again, that's sort of what took us some time is to find out, well, what's a crucial across these various salon activities. The intent of this Ordinance is to establish

in the Town of West Hartford standards for the Director of Health or his designee, my staff, to be able to regulate and enforce the sanitary conditions of the referenced salon establishments that we just talked about. This came about because the State of Connecticut Statute was passed, oh, at least 10 years ago. Pat might even have better knowledge than I but it's been quite some time and it's 19A-231, specifically subsection (1) subsection (b) that states in part, "The Director of Health for any town, city, borough or district department of health or the Director's authorized representative shall inspect all salons within the Director's jurisdiction regarding their sanitary condition." It goes on to further state, "If any salon, upon such inspection, is found to be unsanitary, in an unsanitary condition, the Director of Health shall make a written order that such salon shall be placed in a sanitary condition." So what has taken us so long is we had no, no defined sanitary condition or unsanitary condition. So what this Ordinance is trying to do, the proposed elements, is trying to establish a uniform set of standards for the salons in West Hartford. The Ordinance also sets the requirements for a permit, for inspection and how enforcement activity will be conducted. And additionally, it looks to hold the owner of the establishment responsible for these activities not necessarily the individuals that're practicing the salon skills and technicians that're there. They are licensed by the State, many of these professions, are licensed as individuals through the State of Connecticut. So we're not looking to put them in double jeopardy but we are looking to make sure that the owner hires qualified people, keeps people trained and keeps the facility in good shape. The approach taken is similar to the permitting, inspection and enforcement of the sanitary conditions of the massage establishment salons that I believe is Chapter 117. I don't know, I didn't double-check that number, which has been very effective and I think from the massage establishments' point of view, very successful for them and has done a good job of, I think, making sure that people that patronize the, the massage establishments have a meaningful and appropriate allied health experience at these massage establishments. [Coughs] Excuse me. The Salon Ordinance also includes specific sections on definitions, plan review for new or renovating or renovating salons, how the permit requirements are, fees, inspections, general sanitation standards and specific sanitation around certain specific operations. For example, tattooing is different than, than barbering. So there're some components where inside the Ordinance we highlight those unique characteristics that might apply just to one. But for the most part, they're general sanitary standards that apply equally to all the facilities. The Salon Ordinance also provides appropriate due process for anyone that's aggrieved by any actions that I take as the Health Director or that my staff take. There's appeals process and rules as to how we conduct the hearings there so due process is built into this as well. We did a survey for tonight just to find out in the Greater Hartford area how many of our neighboring towns already have regulations in place and as we stretched that circle around Greater Hartford, 25 of the municipalities around us already have an Ordinance in place and there are five that do not, West Hartford and Bloomfield being two of those five. And we're here tonight hopefully to make that four and 26 regulations approved in the near future and we will do the same on our Bloomfield side of the street based upon what happens here in West Hartford. I won't bother to read you the 25 towns unless somebody really is curious. In the process of drafting the West Hartford Salon Ordinance, we did review the language and best practices of many of these towns, specifically the ones that had, that were towns similar in comparison to West Hartford or and/or similar in the health services programs that they run to what we ourselves run and what we expect or what, what is expected of us by the Town of West Hartford. Several drafts of that Ordinance were made available during the comment period and we solicited comments. We kept it out, we put it on our website, we

opened up a way in which people could actually post their comments on our website to us and we'd go and see if that was going on. We worked with the Chamber and the Merchants Associations to try to identify who these, who the salon establishment folks were and when possible we provided hard copy to them. When possible, if, if they asked us to come and review their establishment, we did that. Aimee made several inspections with operators and owners just to see how the Ordinance would actually play out. And we conducted several listening sessions, where we just simply hosted or in this case, the Park Road Association and the good folks at the Playhouse allowed us to use their facility on a Monday and we invited all the providers in the area to come in and just tell us what they thought, so we listened to what they had to say. And with each iteration of that, we made some more adjustments, some more corrections, some more improvements to the language of the Ordinance. At each step, whenever it was appropriate to improve it, we did. By the same token, we had to keep in mind it is still some enforcement component. We can't take that part out. I think some would've like that but we had to leave that back in. Over that two year period, the majority of all of our feedback was positive from both providers and patrons. I, I don't think I had a patron not say, well, that's a good idea or you start hearing, well, you know what happened to me once? So you hear a lotta those kinds of stories along the way. And I'm not saying those stories won't continue but at least now we have a reason to go and talk to the owner and find out what, what's going on with that story. They showed their, throughout that whole time, they showed their understanding of why we needed to do this. They understood that we are in a place where we hafta do it but we need to have some sort of a level playing field in order to make sure we can do it fairly. However, some have asked if this regulation was overregulation, unnecessary. Some people came out and said that and asked where the legal authority came from. But as I've already said, the Statutes in the legislature says, "I shall." I, I don't have a lot of wiggle room there. We hafta do it. So the authority really comes from the state legislature and they're telling, they're directing us to do this. The, the other part is just the fact that, you know, is it overreaching? Well, I'm not sure but you know, we did look at the 25 other municipalities that've successfully implemented this and I haven't heard a lot of negative feedback going on in their communities. There's growing pains with any new inspection program. We hafta learn the logistics for doing it but those'll be more internal complaints about us, please, how can we do this better than the fact that, that'll come from the establishments themselves. I think they'll be satisfied with our service but we just hafta figure out how to be more efficient at, at how we get, do it so we'll be one of those, we'll start by crawling and then we'll start, start walking and then we'll have it under, under control pretty quick. Another question that was often asked was, you know, how is this, how is this public health? What's this got to do with public health? In today's world, any communicable disease is just an airline ticket away. I've spoken to you before and over the years about scary things that just happened to pop up and unfortunately, that's true more so each day so it seems in our global marketplace and our small world. There are potential bacterial diseases that you might not think could be associated with this sort of thing but certainly Staphylococcal aureus. You may think it's a, something you don't have but it's on all of our bodies. It's a very common bacteria, common in our noses, for example, and it belongs outside our skin. But if it gets in the wrong places, it can cause tremendous infections and problems. And the one that you can think of most is Methicillin-resistant Staph aureus locally or commonly known as MRSA. So MRSA is something that can easily be transmitted in any of these salons by, by contact, even doing their profession correctly. If a patron comes in who is ill or has that, they could pick it up from the patron, the worker could. By the same token then the worker could pass it on. Not cleaning the,

having proper sanitation for the equipment could also pass that on. So the regulations do say and give the, a provider the right to say, gee, I'm sorry but I think you have a communicable disease. I can't service you. And the person can be all sorts of mad but they're gonna hafta talk to us and we'll explain to them why they can't do it. By the same token, if the worker is sick, we'd expect the owner to send that person home that day and sorta say, hey, maybe you need to take the day off today and we'll have somebody else cover for you. Certainly, Streptococcal infections are common. That's, that's a bacteria that's all around us as well and again, that gets in the wrong place, it can lead to sepsis and basically blood poisoning, so you don't want that and we don't want that in the community. We don't expect people to go and get a service at a salon and then bring something home to their home, family, schools, and workplaces. That is why this is public health. Fungal infections are certainly there; ringworm, athlete's foot, common things that folks that maybe work out in, in public gymnasiums or public gyms might, might be very cautious about but yet the average person going to a salon wouldn't think about it perhaps in that environment. And then, of course, there's the dangers of the viruses, things like hepatitis family, HIV family, things like that, which don't happen. We don't know of that happening but could it happen? The potential is there. And last, parasites, lice. Who wants to go and you know, sit in a, sit in a chair after somebody was there with lice. So there's just lots of reasons why old-school public health is alive and well, keeping an eye on, on these sorts of establishments at this point in time. The proposed Ordinance supports and promotes the, the health of the providers as I was just saying. We, we want them to be healthy and we want them to be protected and we want them to be able to perform in, in surroundings that're appropriate for whatever it is that they're doing. So really, we're looking at that environment. We're looking at the box in which they work and making sure it's in good shape. It's clean, it's got proper lighting and plumbing all of that. That's all part of the plan review process. You don't wanna come in and find out, oh, hey, this is a great facility but you know, you really should've put those hand sinks over there 'cause it's a lot easier to do that on a piece of paper than it is to actually get the plumber to come back. So that's part of what's important in that and the Department of Public Health, as I said, licenses the individuals so we're not trying to get into the complaints about my hairdresser did this, my, my nail technician did that. The nail technician part we'd probably have to look in because they're not licensed but if you're a licensed professional, really, we're gonna refer that into the State Health Department because they're the ones that control that license. They're the ones that give that privilege to practice and they're the ones that can do the investigation and, and make a determination as to whether or not that complaint is real or not real. So again, we just wanna make sure that person had the opportunity to do it right. If they do it wrong, it's their license that they'll hafta worry about. It should be noted that the regulations because in some ways it seems maybe difficult but some of these activities do generate what's called regulated medical waste. It's waste that may or may not have bodily fluids or may or may not have some blood contamination. We are not trying to deal with the control of regulating medical waste. We wanna make sure that they have a plan and policy in place to handle it. Bloodborne pathogens are actually controlled by OSHA. That's an exposure to, of workers to potentially hazardous blood contamination. Some of those diseases I spoke of earlier would fall in that category. And the other part is actually the, the removal and the disposal of regulated medical waste, which is actually a Connecticut Department of Energy and Environmental Protection. So it's not a function of us as the Health Department or you as the Town in those particular cases. Those're really much more federal standards that're that hafta be adhered to and again, enforced by those agencies. We could get a complaint but we'd hafta pass it on to those agencies.

There's a concern we heard about health records, medical records, HIPAA. Not sure why that came up as a comment. These are not health programs. These are not health procedures. But there are specific reasons why record retention is important and that we get to see those record retentions. In several of these categories, specifically tattooing, body piercing and tanning salons, the legislature has passed age restrictions and we need to be able to verify that the age of the patrons that're there are proper to that, that particular age restriction. It's really more of a criminal evidence than it is health evidence because if they are showing that they have people that're underage that they are treating, I'm gonna turn that over to Chief Grove, Chief Gove. So I mean, it all depends on what, what's there but we hafta look for it. By the same token, if there's an allegation that somebody was there that's a minor, we need to be able to investigate that complaint to find out was Jane Doe or, or John Doe actually the proper age when they came in. So that documentation will be the responsibility of the owner again because it's not really the technicians. It's the owner that's, that's handling probably the policies for that establishment. In conclusion, I, I would just like to say that, you know, West Hartford definitely enjoys a high quality of service from these individuals. You know, we do not get complaints. We do not get concerns from the majority of all the establishments. We estimate there's about 150 plus or minus. There's, there's always new coming in and there's other ones going out, so we estimate there's 150. The licensed professionals are, are tremendous, stellar. We get no referrals from the State Health Department to look into anything. So again, high standards are here already amongst the, amongst, the providers and the, and I think the patrons have that high expectation too that they're gonna get that service. But there are always the outliers and we do have some outliers. So this Ordinance supports the efforts of, of those individuals and it supports it by our helping or working with or directing the operator or the owner to do it in a positive way and to be able to have them have standards that they can meet or exceed. So we're not going out to try to catch anybody doing something but we are going to give them that opportunity to be stellar, to get above that. There's no reason why you can't be better, better than the standards we've set and satisfy your customers because that's what, that's what their businesses are really all about. And with that, I'd just like to thank you once again on this lovely August night for considering this Ordinance tonight and I would just invite Aimee to certainly stand next to me and if there's any technical questions that you have at this point in time that we can assist you with, we'll be glad to do our best.

President Cantor: Thank you, Mr. Huleatt. I, I think, lemme, can I just ask a question? We've received one communication that you addressed some of the items on from Mr. Liftig, Dr. Liftig actually, a very involved in Park, Elmwood Business Association and was concerned about a lotta different issues. Has anybody responded to these particular issues to him or?

Mr. Huleatt: Not to him directly, no. We didn't. To be honest, that came in while we were on, Aimee and I were both on vacation. We'll be happy to sit down with him and review that.

President Cantor: Okay.

Mr. Huleatt: Some of, some of that came out of, of, I think, some of the, some of his membership over that or at least one individual over there because we did hear a lot of that when we did a listening session at the, at Park Road I spoke of earlier, so it wasn't a surprise. It was, Dr. Liftig wasn't there that particular day but a member of, of the Elmwood Merchants' Group was so some of that we did hear previously and we, as I said, we took that and incorporated it the

best we could to correct those types of concerns where, where they were real for lack of a better term.

President Cantor: It, it does sound from the communication that there was a little misunderstanding and this was passed by the State, this shall be regulated and there, there was more power that the Town had to, a flexibility that the Town had.

Mr. Huleatt: Correct.

President Cantor: So just, we just wanna make sure that that's clear and that there's good understanding.

Mr. Huleatt: Yeah. We'll be happy to meet with him and, and share that. Yeah, those sort of first four bullets he had really are sort of like, you know, why, why is West Hartford doing this when the rest of the world isn't?

President Cantor: Right.

Mr. Huleatt: Well, the rest of the world's already done it and, and we're sort of, we're sort of...late.

President Cantor: Right.

Mr. Huleatt: Later than, than the rest of the, as I said, the surrounding towns are. So hopefully we can set up an appointment with him and go talk with him.

President Cantor: Okay, that would, I would appreciate that. Any questions from my colleagues? Mr. Wenograd?

Councilor Wenograd: Thank you. Just continuing on that point, Dr. Liftig did mention a few legal concerns. I, I guess it's more of a question for Attorney Alair, whether or not we've checked into the specifics. It did not seem to me if there were any but I, I defer to your expertise.

Mr. Alair: Yeah, specifically, he mentioned HIPAA, though I, as, as Steve has already commented on HIPAA. I don't see HIPAA as an issue at all. He also mentions the ADA specifically and states that employers are prohibited from asking about communicable diseases that their employees may have. One thing that Steve may be able to tell you a little bit better than I can is this is not always an employer/employee relationship. It is often the case that salon owners own the salon and lease a chair or lease a space to an independent contractor, who will work, work in them. So I'm not sure that you have a true employer/employee relationship there in all cases. But that issue aside, the ADA has very specific provisions that do allow employers to ask employees about medical conditions that they suffer in a couple of different cases. One, when it affects the employee's ability to perform the essential functions of their job and I think, arguably, communicable diseases in this setting do. And two, when those employees pose a direct threat to themselves, their coworkers or others. And that is precisely the reason why we are regulating that is because of the concern about the direct threat. I think the important thing to remember is, in the context of the provisions in the, in the Ordinance addressing communicable diseases, it simply, as Steve mentioned, requires the creation of a policy. It doesn't require that you say, oh, you have a communicable disease, perhaps hep A, hep B, hep C, you can't work. It says you hafta have a policy and it says that if somebody has an active outbreak, the policy hasta say go home. It doesn't say that you're prohibited from working altogether. So I think there's a distinction to be made there. Overall, I don't see an ADA issue. I really don't think there is one, though I, I certainly appreciate the question being asked.

Councilor Wenograd: Thank you.

President Cantor: Thank you, Mr. Wenograd. Mr. Dodge?

Councilor Dodge: As a follow-up to Mr. Wenograd's question, under the definition of communicable disease under this Ordinance, would HIV/AIDS be considered a communicable disease?

Mr. Huleatt: It is considered a communicable disease just by its very nature. As I said in my comments, the potential of it is there but the real actual risk of it is, is not. So the, the individual, you know, to, to spread that, it actually requires direct bodily fluid contact. It would require an individual to get somehow an open wound and that open wound to actually be introduced to an open wound of, of another person type of thing. Again, that gets into the bloodborne pathogen part, which is OSHA, where you get the medical waste part. That's all interrelated in laws that're, have been developed, you know, back during the 80s to protect individuals that have certain diseases. With the accommodations component, I would just stress for Mr. Wenograd that, really, we would work with these folks, as Pat said, with the policy to figure out, well, how can we accommodate this person to continue to practice their livelihood. And if they're a licensed professional, that's not up to me. That's gonna be with the State Health Department. If it's a non-licensed professional then that's where we gotta be a little bit more careful. We gotta make sure these people understand what these risks might be.

Mr. Alair: And I think, I think you should also be aware that Dr. Liftig raised questions about three specific definitions; communicable disease and infectious waste, two subcomponents in that. Those all come directly from either State Statute or the State Public Health Code, which is actually a regulation of, of the Department of Health. It's not a Statute. Communicable disease, I took that definition and I reworded it in layman's terms but it's very true to the original. Pathologic infectious waste and human blood, you know, pathologic infectious waste is directly out of the Statutes. And human blood and bodily fluids, I combined two definitions just to make the Ordinance a little bit neater.

Councilor Dodge: So I, I guess one concern I would have then looking at Section 145-6(h)(7), "All salons shall have the following, shall have in full a written communicable disease policy, including at a minimum the following requirements," so at a minimum they must do this. "All employees must report any communicable disease which they suffer or carry." So under that requirement, would somebody with HIV/AIDS be required to report their HIV status to an employer if they worked at a salon?

Mr. Huleatt: No, they're not. I cannot envision that. Under the other section...

President Cantor: I think you're...

Mr. Huleatt: ... rules and regulations for the effective carrying out the...

President Cantor: Thank you.

Mr. Huleatt: Under the section, which has this ability to develop and propagate such rules and regulations, the confidentiality of an AIDS individual is very protected in the healthcare industry, and as the Health Department, we would protect that as well. So that would not be an expectation. The issue would only be if there was an exposure, trying to find that source of the

exposure would lead backwards to, perhaps, finding out or inquiring the status of individuals in that and what they did and what was their job and what did they do that particular day in order to get, to understand how did that transmission happen. But that would be, that's not even part of this Ordinance. That's just something that as a public health agency for you, we do all the time.

Councilor Dodge: So under that same subsection that I just cited, though, who, who is the employee reporting this, their status as far as having a communicable disease to here? Their employer, I assume, correct?

Mr. Huleatt: I think the policy would be, yes, it would be to their employer. However, again, we could accommodate that and they could report it to us confidentially if they wished. Again, we would have to write that as part of our, our promulgation of rules that individuals could let us know if they have a chronic condition, such as a disease such as HIV, which at this point in time, still doesn't have a cure but you have a long, long, much longer life expectancy these days so that would happen. For the most part, you know, the only way that HIV would come around would be in some sort of blood transmission, which would be more indicative of a tattooing or body piercing than any of the other types of situations, where you're actually breaking the skin of an individual. And it's probably more so about the patron than it is about the worker and the, any neither party could actually know what their, what their status is at the time that that happens unless, unless they've been tested. So I think it's a, an unusual circumstance that has never arisen in my tenure as your Health Director and I don't envision it happening in the future.

Councilor Dodge: But I guess, again, reading this section, there's no trigger for reporting. It simply says that if an employee has a communicable disease, which you said would include HIV/AIDS, that they have to report that to their employer. And, and I guess the reason I'm bringing this up is I just have a concern whether that would be appropriate and maybe that's something that we should look into further.

Mr. Huleatt: I mean, we can make it that HIV is exempt if you wish and, and I don't have a problem with that 'cause I think it's such a low risk type of factor, even my comments I said, you know, it's such a low probability but could it happen? Yes, it could happen. Is it considered a communicable disease? Yes, it is so I can't tell you it's not. We would have to exempt it out of the communicable disease component from that standpoint. There are, I should state that inside the realm of confidentiality for HIV that is not something that gets reported to local health departments. However, there are roughly about 100 diseases that are reported to us annually about the community so not everything that the employer needs to know we, we already know. HIV is one of the ones that we do not know. They do not share that data because it is covered under, under statutory protections.

President Cantor: So how are other, the 25 other municipalities that have adopted standards. Do we know how they've treated this or is it just silent too?

Mr. Huleatt: I'm not aware there's been an incident of it, I mean, to be quite honest. That's how low the frequency of this would be. Aimee has, I'll give, from the standpoint of, Aimee Krauss to the microphone. From the standpoint of how other Ordinances or the other municipalities, the folks you've talked to, have they looked into HIV status?



Ms. Krauss: This Ordinance was also drafted using other local municipality Ordinances. The language of communicable disease is, is the same language as Pat stated. Specifically to HIV, I, like Steve said, I don't, I don't see there being that issue. I don't know specifically how they've, they've addressed it.

President Cantor: Mr. Dodge.

Councilor Dodge: Sorry, thank you. Do other municipalities, they may have the same definition but do you know do they also have this requirement that employees report their status as far as having a communicable disease to an employer?

Ms. Krauss: Yes.

Councilor Dodge: Okay.

Mr. Alair: I, I think there may be a solution. There is a second-class of diseases called reportable diseases. As Steve mentioned, there is a, a list of diseases that the State requires be reported. If in, I'm sorry, I left, gave you my copy. If in that subsection (7)(i), we said "All employees must report any reportable diseases," rather than communicable diseases, that would exclude HIV from the list. I, I believe that's correct. And obviously, some other diseases as well. We'd leave in the definition of communicable disease because active outbreaks are addressed in the subsequent subsections and I'd add a definition of reportable disease pulled, I know there's one in the State Statutes and I've forgotten where it is exactly but I can pull it from the State Statutes or make reference to the State's published list and that, that would narrow it up. And I don't believe that that would be a substantive amendment because it actually shrinks what's required to be reported. So if, if that was proposed by way of an amendment during your deliberations later, we could do that.

Councilor Dodge: Thank you. And I do apologize for bringing this up now. I'm literally reading on the fly.

Mr. Huleatt: No. It's a good question. It's a good scenario question. You know, keep in mind that even, whether they do or do not report, the ultimate enforcement is ours. Our decision is whether, would be still at play. You know, we'd be deciding what that outcome or expectation would be. You know, does that mean automatically we'd go and close them? No. We'd look into what the circumstances are and that'd be given that option to tell us, well, I couldn't ask that person for one reason or another and if that makes sense, we'd be saying, that makes sense. So I think, I think Pat's suggestion sounds positive because that's really the information we get already but you know, we would then hafta educate for the establishments. We'd just hafta share with them what reportable diseases we need and share that with them and we can do that. And that's, that's an annual list that gets published publicly, by the way, by the State Health Department every January so it's not a hidden list.

President Cantor: Thank you. Ms. Kerrigan.

Councilor Kerrigan: And thank you for that clarification. So in light of that issue with HIV, number 3. He says, Dr. Liftig, potential legal issues with the language, putting the Town at risk of litigation. Are, are we at risk of litigation or what is he referring to? Is...

Mr. Alair: We're always at risk of litigation. [laughter] After 30 years, I know this. I, I don't know what his argument is there. I think it's what he refers to later when he talks about the ADA issue about employers or employees being required to disclose to employers. I think that's what he's getting at. I don't know how that becomes a liability or a litigation risk for the Town. It may be a litigation risk if somebody challenges whether our Ordinance is consistent with the ADA. I think it is. I think employers under the ADA do have that authority to ask. You, you don't have the authority legally under the ADA when you interview a pool of, of applicants to ask do you have HIV? What you do have authority to ask after you've hired somebody is do you have any diseases that affect your ability to perform your job or are a direct threat? And I think in this case, both of those are legitimate considerations and questions and I don't see how that's an ADA violation.

Councilor Kerrigan: So if an individual is just contracting or renting a space or, or a chair, then are they also subject to this as well?

Mr. Alair: They would be subject to the Ordinance, yes. And that's not even employer/employee relationship. That's a contractor relationship and, and I'm not sure that there is any concern about the ADA in that situation. Or if it is, I think it would arguably be the same standards that applies or a parallel set of standards.

President Cantor: Hello? Denise, do you have a question? Thank you, Ms. Kerrigan. Mr. Barnes.

Councilor Barnes: Thank you. I just, a couple points to follow up on starting with Ms. Kerrigan's point. The language of the proposed Ordinance talks about all employees must report. So if someone is a license holder that simply is, you know, renting space in a salon, they are not technically an employee and I think Mr. Alair already made that point. So under this language, they would not be required to provide this information to their employer, the salon owner, correct?

Mr. Huleatt: Well, I'll give the first part and I'll let Pat do the second. Clearly, if they're independently operating inside another structure, we would probably look at them as being an independent operation and subject to the licensure on their own. It's not dissimilar to when you go into some of the large grocery stores now, you may think that sushi vendor is part of that chain. They are not. They have leased that space and we regulate them independent of the grocery store. So it depends on how far that independence goes but if they demonstrate, you know, we have nothing to do with those guys. We're just on, on here ourselves then we would look at them like they've got a storefront in the mall and we'd say, you know, then you should, you should apply to us directly so you, so you don't hafta worry about what they're doing. And we do it for the positive reason then don't, you don't wanna be associated with them 'because if we take their license, you're done. You're better off then, in that circumstance, to be your own

self. However, they'd hafta still make those accommodations for things like lavatories and things like that that're shared facilities. So it would be a case by case.

Mr. Alair: And just to follow up. The, the Ordinance regulates salons. It regulates the owners of salons and it regulates operators, which are any people within the salon. So you have the, if you have the independent contractor situation, the Ordinance does regulate operators. In general, the owner of the salon is the one responsible for upholding all of the regulations regarding all areas of the establishment, which would generally include things like recordkeeping. So they would hafta have a policy in place. If they are hiring independent contractors, as well as employees, I suppose, yes. You, your point is taken that, that the independent contractors technically wouldn't be part of the owner's responsibility to have a communicable disease plan in place for their employees. But those operators, those independent operators who are working there, are also licensed professionals and their licenses are on the line independent of the owners and independent of the communicable disease policy that the owner or yeah, policy that the owner has to have in place for themselves and their, their employees.

Councilor Barnes: Okay. So when we look at this kind of regulatory structure top to bottom, we have, we have a State law that says that Directors of Health should create a set of standards. Does the State law in and of itself provide any standards in this area?

Mr. Alair: Short answer, no.

Councilor Barnes: Okay. And what I mean by this area is this, these salon regulations. Are we kind of doubly regulating these businesses? The State says you must do A, B and C and we say you must do these other things.

Mr. Alair: There are a couple of provisions where we have duplicated the Statutes and we have duplicated them deliberately because, as Steve said, we're trying to put this all in one place so everybody can find it. The, the tanning provision and I'm blanking out on the other one, tattoos, I think it's tattoos. We took two provisions and copied them from the statute or the regulation into the Ordinance so that we would certainly be consistent. Everything else is implementation of a broader level of authority. Thou shalt inspect for sanitary conditions. This Ordinance tells you what the sanitary conditions are. There is a general provision. The, the Public Health Code. I, I love this language because it's, it's old fashioned. The State Statute mandates that, "Town, city and borough Directors of Health or their authorized agents shall within their respective jurisdictions examine all nuisances and sources of filth injurious to the public health because such nuisances to be abated or remediated and caused to be removed all filth which, in their judgment, may injure the health of the inhabitant." Very broad statement. It doesn't tell you what a source of filth is in the community or a nuisance is. This puts some meat on those bones to, to get us someplace where a salon owner in the everyday going about their business knows what's expected of them. We can't walk in go, ah, your Q-tips are blue. They should be yellow. We're telling them what the rules are upfront.

Councilor Barnes: Okay. And does the, the State Department of Health, do they conduct any, you know, kind of investigations or you know, onsite inspections of these businesses?

Mr. Huleatt: They have the authority to do it but it's, it's passive. They may inspect. What the legislature wrote the local health departments is we shall inspect, so, so theirs is passive and ours is not.

Councilor Barnes: Okay.

Mr. Huleatt: So, so that's the dilemma. Theirs does not specify any standards inside of it inside of that may inspect. To get to your other part, what most of the language that isn't regulation hasta do with the qualifications to be licensed, so it's all about the individual. And as I stated, we're not trying to do that so we're trying not to criss, cross swords with that in any way. But there is no regulation for an owner, a manager. You know, anybody could open one of these places, have no skillsets at all and hire people 'cause it's a difficult job marketplace and, and you know, just, just go through life. But that's probably not in the best interest of the Town or the patrons of the Town or the residents of the Town. So a part of what we're trying to look at is, is those owners, the, the people that're truly making the decisions about what that establishment is going to be doing today, tomorrow and in the future so that's, that's what we're looking for.

Councilor Barnes: Okay. And in response to, to one of the questions that Mr. Dodge had, you mentioned that there would be, you know, some rules that would kinda flush some of these things out. So my question is do you envision promulgating rules underneath this 12 or 15 page Ordinance that we have here? Do you envision having another set of rules under this that fleshes out some of these issues?

Mr. Huleatt: Not rules but just procedures for how we'll do it and procedures for how we'll issue the licenses, when we issue the permits, you know, just more policy- and procedure-oriented than any rule. That, that authority rests with you all. If we're gonna do anything that changes the intents of the Ordinance, we would, we would most definitely come back to you and we'd most definitely consult with Corporation Counsel before we, you know, make any of that sorta change. But mostly it would be about how we conduct what we do and some of that might be followup questions or followup re-inspections and things like that, which are things we could, we could do internally, which don't change the, the nature of, of the Ordinance or what we're trying to accomplish.

Councilor Barnes: Okay.

Mr. Huleatt: Just make it more efficient and effective for how we choose to do it.

Councilor Barnes: Okay. And I just have one, one question and one comment. The 145-11 is the Penalties section and it doesn't set forth what the actual penalties or fines would be for a violation. Do you intend to, I guess how would this work? Let's say somebody violates one of the provisions and they're cited for a violation. How would they know what the penalty would be for that violation?

Mr. Huleatt: I'll wait for Pat to find his reference but many of the Ordinances that we are empowered to carry out for you, we are able to do by being appointing as special constables and many of them we would issue a parking ticket fine. So it's no, you know, it's nothing that's any more than to get their attention. We don't do it to punish but we do it to make sure that they're listening. And that's not our, you don't generate revenue by doing parking tickets any more than

the Town, this money all goes to you. We don't collect that. That all goes through the Town process but it's a tool that you have provided us in order to make sure that they listen to us when we, when we are talking to them about whatever ordinance that might be. So I think we have talked in terms of being able to apply that if somebody is chronically not correcting the condition but clearly my task under the Public Health Code, if it's truly unhealthy, we would seek to have to close them.

Councilor Barnes: Right.

Mr. Huleatt: I mean, we can't put the public at risk.

Councilor Barnes: Yeah.

Mr. Alair: Section 1-8, the provision you cited, 145-11 refers back to Section 1-8. There's a general penalty provision in the Code of Ordinances that applies when no other penalty is specified. It's the, you know, in essence, the default penalty and it's a fine of \$65 but in addition to that, we adopted a number of years ago an administrative fee, which adds another \$14 so it ends up being \$79 per violation per day.

Councilor Barnes: Okay. All right. And then one last comment. Mr. Dodge asked questions about that provision in (h) with respect to reporting requirements and your proposal to insert, I guess, reportable diseases.

Mr. Alair: Reportable diseases.

Councilor Barnes: I don't know what the definition of that is or, or whether that, you know, addresses this issue or whether it creates other issues because now we're carving something out that may be important to this Ordinance. And as it, and it's also gonna bump up against confidentiality rights of individuals that have, you know, HIV. And so I don't know if it's worth thinking about a little more than just putting in reportable and leaving it at that or you know, my concern is we may be creating other issues by carving that out and I leave that for Corporation Counsel to, to consider.

Mr. Alair: After we, well...

Mr. Huleatt: Can I whisper one thing?

Mr. Alair: Sure. [laughter] [Inaudible discussion 48:16 - 49:17]

Mr. Alair: Okay. Steve was pointing out that there is a provision in State Statutes already. There's a very parallel set of regulations out there that apply to the food service industry. Food service workers, if they have an illness which is on the reportable illnesses list, are required to inform their managers that they have something, that they're ill. They don't hafta say what they have but it's then the manager's duty to put them on an alternative duty or send them home. What we could do is incorporate that definition, incorporate that kind of an approach into this and what I was suggesting to Steve is close the hearing tonight. We can provide you with substitute language that could be adopted by way of an amendment. I wouldn't wanna try to do it for tonight but do it for your next meeting. So you'd table decision tonight and we'd, we'd come back to you with that minor amendment for your first meeting in September.

Councilor Barnes: Okay. And the, the goal is, is to provide an Ordinance that a business is gonna know...

Mr. Alair: Right.

Councilor Barnes: ...what they're required to do and, and we give them that clear guidance and say this is what you should do and as an employee or independent contractor, whatever we call you, these are what your rights are and this is what you hafta disclose and this, and this you don't hafta disclose whatever it is.

Mr. Alair: Right.

Councilor Barnes: And so I just wanna be clear that we're providing that type of guidance and not creating confusion and putting people at risk of having to disclose information that they may have a right to not disclose.

Mr. Alair: Yeah. Yeah. And just, just to understand where this all comes from. To Steve, it's, it's a communicable disease and to the public health community, it's a communicable disease. HIV is no more or less, Dr. Liftig pointed it out, no more or less a communicable disease than the common cold, a little bit more serious but they are both communicable diseases. And from that standpoint, from a public health perspective, treated very much the same way. This, this category of reportable disease is a, is a slightly different thing. It comes out of that food service industry thing and is something that, that because I was preparing for tonight, I was reading the Statutes again and saw it and that's why I thought, I suggested the idea. But...that works for you, Steve?

Mr. Huleatt: Yeah. I mean, what, what, what happens in the food industry is there's no reason why not to use it here. As I've said during our listening sessions, we've tried to make it better every time and we're trying to make it consistent across the business communities and it makes sense that we look at the food. We, we really didn't look at the food when we were talking about this one. We looked more at the massage mainly because it's, you know, it's actually physical contact. So the difference between food is a food worker doesn't touch you so they're not worried about getting something from you on them. You're worried about eating something from them inside of you, so the direction of, of the communicable disease is different. So we didn't look at it that way but we could certainly look at it from the standpoint of how does the employee report it to their immediate supervisor or operator and look at how that language looks and make it something similar. But the issue here is, is, you know, the, the handing, the hand to person contact, of trying to prevent the disease from the patron to the worker, as well as potentially the worker to the patron or from, from worker or patron from a contaminated piece of equipment that the previous worker didn't clean properly or, or the equipment didn't work correctly. So, so all this reportability helps us find out where in that, that pathway of, of transmission do we stop it, you know. You know, that's, I won't go into public health lecturing but there's lots of great examples about how things can go wrong if you can't get to that source real quick and, and put it out. So I think that's the difference and we just hafta shift that mindset a little bit and think about it a little bit more from, as Mr. Dodge pointed out, from the worker's point of view and see what we can do.

President Cantor: Mr. Dodge

Councilor Barnes: Thank you.

President Cantor: Thank you, Mr. Barnes.

Councilor Dodge: Thank you. Since it does sound like we may be tabling this at the next, when we go into our, our meeting, I just wanna flag this now. But as you guys review this and look at how you're going to define communicable disease in a more appropriate way, I think we should also look at 145-67. We were looking at 7(i). Also, 7(ii) and this issue of what an, an active outbreak is because I don't quite, I think it was already brought up earlier tonight but I don't quite know what that means, an active outbreak. And under what circumstances somebody would need to stop working because they were having an active outbreak of, say, HPV or something of that nature. So I think that's also something that we should look at.

Mr. Huleatt: That one's not really within the local purview. That actually comes all the way down from the Centers for Disease Control to the State Health Department to us as the agent of the Commissioner of Health. I'm gonna hafta do what they tell me, so when it comes down to what's an active case, that would be the State Epidemiologist would tell me that. And when is it over? The State Epidemiologist would tell me that. So and that isn't part of the Ordinance. That's part of my job. So, so I would caution us from going too far in that venue. We could certainly see when, when we come back if there's something we can do to, to ease your concerns about what is an active outbreak but that's really getting into the public health realm of terminology and I would caution...

Mr. Van Winkle: Could you tell us what you think it means?

Mr. Huleatt: Yeah. It means that there's, there's somebody that's sick right now and there's somebody that's getting sicker or about to get sick because of their exposure to that individual right now. And depending upon what disease it might be, one case might be sufficient. A case of tuberculosis is an active case of tuberculosis and that can lead to two cases, four cases, six cases. You know, that first case, we hafta stop it. We can't have somebody walking around town with tuberculosis. That's an, that's an old disease. It's still in our town. We still have cases and we still go out and hafta do, observe therapy on these individuals to make sure they take their medicines every day. That's part of our job. So that's active. That's an active case and that's active surveillance and that's active intervention in that, that individual, that individual's workplace, that individual's home. So TB is not necessarily one of the concerns I have with this particular Ordinance but that would be the easiest one that I could share with you right now.

Councilor Dodge: So, so active outbreak is, as far as your understanding, is not an active outbreak in the individual but an outbreak in the community.

Mr. Huleatt: In the, public health. I am public health. I'm not your doctor. That's correct. So I am trying to make sure that whatever the individual may or may not have does not get into the community at large. That is correct. That would be a fair statement.

Councilor Dodge: Because this is talking about the employee suffering an active outbreak. And again, I, I do have to apologize because I'm on Community Development and all of this has sort of come up as, through the lines of questioning that other people have asked tonight.

Mr. Huleatt: We, we can look at that language.

Councilor Dodge: Okay.

Mr. Huleatt: I mean that's probably the same thing.

Councilor Dodge: Because I, I take your concern if there's an active outbreak in the community of, say, tuberculosis. Obviously, that's something you want to avoid.

Mr. Huleatt: Right but it, just that one case is active in that case, which would be similar to this particular language.

Councilor Dodge: But so at what point is something active and not active in an individual?

Mr. Huleatt: Yeah, it's determined by the Centers for Disease Control and the State Epidemiologist.

Councilor Dodge: Okay, so if you could get us a, a definition of that then so that we understand what that means.

Mr. Huleatt: It's disease-specific. I mean, I'm not, I'm not trying to be hard with you here but in tuberculosis, it's one case. If we have diphtheria, also known as whooping cough. We have that every year in the schools. That's if we have three cases, so if there's three cases, that becomes an outbreak. If there's one case, it's, it's some, it's either a student or a teacher with, with diphtheria. But you know, it depends on the type of disease what becomes an outbreak. One case can be but in other cases it might be multiple cases.

Mr. Alair: We, we can provide you with a definition.

Councilor Dodge: All right.

Mr. Huleatt: Yeah, we can clean the language up and make it more simple as to what, what it should be saying. But you know, to try to, I would be, I would be happy to come back to any committee to talk public health with you and answer what public health terms you might have questions about. But, but that's, that's probably what I interpreted that to be. Clearly, you have a different point of view and you're interpreting it differently and I, I appreciate that.

President Cantor: Anybody else? Okay. We are gonna go to the signup sheet and see if anyone signed up.

Mr. Alair: It is blank.

President Cantor: Okay. Is there anybody here that would like to speak on behalf of the, to the subject of this Public Hearing? Okay. So there is no comment from the public. I think our Council is done with comment for now. If we close the public comment section, we can still, the Council can still ask questions on changes made to the policies, right?

Mr. Alair: Yes. At, at this point you have really two choices. You can keep the Hearing open if you'd like, which would allow us to come back with some changes, explain them during the Hearing process and allow the public to speak to them if they chose. Given that they're a very narrow set of questions based on this, I think you could close the Hearing. You're perfectly entitled to receive technical advice from Staff after the Hearing is closed. Technical advice in this case would be drafting some minor amendments to the Ordinance to, to address these specific questions and we could bring those to you and you could deliberate on them at the time you deliberate on the Ordinance at your next meeting.

President Cantor: Okay. One more question. I am not going to be at the meeting and I can't call in so we are a little lean on...people that're here so...

Mr. Alair: Because this is not a Zoning Ordinance, another member of the Council could read the transcript, familiarize themselves with the record and participate in the vote.

President Cantor: Okay. So I will...



Mr. Alair: Or you could postpone it for two meetings 'til you're back.

President Cantor: Right. Okay. So at, I, I think closing the public comment section may be, there was really nothing substantially changing. These are really technical changes that we're making internally to satisfy our own, almost like we would do in a committee meeting. So I would suggest that we close the public comment section and, and then have Town Staff come back with the changes and vote on the Ordinance change at that time. Are you, is everybody okay with that? Denise? I don't know where she went. I'm a little concerned. Okay. Are you, are you...

Councilor Hall: I'm here and that makes sense.

President Cantor: Okay. Thank you. All right. Okay, so that's what we are going to do. We are going to close the Public Hearing and do I, is the terminology table the Ordinance vote until the adoption of the Ordinance until the...

Mr. Alair: Correct.

President Cantor: ...either the September meeting, either the first meeting in September or the second meeting in September.

Mr. Alair: So right now you'll close the Public Hearing.

President Cantor: Yes.

Mr. Alair: When we get to the Council meeting, you will table that item to a specific date. You, I would suggest tabling it to your next meeting. You can always table it again if you choose.

President Cantor: Okay. Okay. Sounds good. Okay. Thank you. So we are closing the Public Hearing. [gavel]

Hearing closed at 7:24 p.m.

Essie S. Labrot  
Town/Council Clerk